

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

UNITED STATES OF AMERICA		DOCKET NO. 1:17CR93
		MAY 11, 2018
VS.		1:34 P.M.
WESTLEY POLLARD, JR.		BEAUMONT, TEXAS

VOLUME 1 OF 1, PAGES 1 THROUGH 16

REPORTER'S TRANSCRIPT OF SENTENCING HEARING

BEFORE THE HONORABLE MARCIA A. CRONE
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE GOVERNMENT:	CHRISTOPHER TORTORICE U.S. ATTORNEY'S OFFICE 350 MAGNOLIA SUITE 150 BEAUMONT, TEXAS 77701
FOR THE DEFENDANT:	JOHN MCELROY FEDERAL DEFENDER'S OFFICE 350 MAGNOLIA SUITE 117 BEAUMONT, TEXAS 77701
COURT REPORTER:	TONYA B. JACKSON, RPR-CRR FEDERAL OFFICIAL REPORTER 300 WILLOW, SUITE 239 BEAUMONT, TEXAS 77701

PROCEEDINGS REPORTED USING COMPUTERIZED STENOTYPE;
TRANSCRIPT PRODUCED VIA COMPUTER-AIDED TRANSCRIPTION.

1 [OPEN COURT, DEFENDANT PRESENT.]

2 THE COURT: The first matter this afternoon is
3 No. 1:17CR93, Defendant 1, *United States of America*
4 *versus Westley Pollard, Jr.*

01:34PM

5 MR. TORTORICE: Chris Tortorice for the
6 government. The government is ready to proceed, your
7 Honor.

8 MR. MCELROY: John McElroy for Mr. Pollard.
9 We are ready to proceed, your Honor.

01:34PM

10 THE COURT: All right. If you would please
11 come forward.

12 Have counsel and the defendant read and
13 discussed the presentence report, including any
14 revisions?

01:34PM

15 MR. MCELROY: We have, your Honor.

16 THE COURT: Has counsel fully explained the
17 report to the defendant?

18 MR. MCELROY: I have, your Honor.

01:34PM

19 THE COURT: Mr. Pollard, do you fully
20 understand the presentence report?

21 THE DEFENDANT: I do, your Honor.

22 THE COURT: Does counsel or defendant wish to
23 make any comments, additions, or corrections to the
24 report?

01:34PM

25 MR. MCELROY: No, your Honor.

1 THE COURT: And, Mr. Pollard, does the report
2 adequately cover your background?

3 THE DEFENDANT: I'm sorry, ma'am?

01:35PM

4 THE COURT: Does it adequately cover your
5 background?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: Has the government read the
8 report; and does it wish to make any comments, additions,
9 or corrections?

01:35PM

10 MR. TORTORICE: I have; and no comments,
11 additions, or corrections.

12 THE COURT: And no objections were filed by
13 either party; is that correct?

14 MR. MCELROY: That's correct.

01:35PM

15 THE COURT: To the extent the court previously
16 deferred acceptance of the plea agreement, it is now
17 accepted.

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18 The court finds the information contained in
19 the presentence report has sufficient indicia of
20 reliability to support its probable accuracy. The court
21 adopts the factual findings, undisputed facts, and
22 guideline applications in the presentence report.

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23 Based upon a preponderance of the evidence
24 presented and the facts in the report, while viewing the
25 Sentencing Guidelines as advisory, the court concludes

1 that the total offense level is 26, the criminal history
2 level is I, which provides for an advisory guideline
3 range of 63 to 78 months.

01:35PM

4 Does defendant's counsel wish to make any
5 remarks on behalf of the defendant?

6 MR. MCELROY: I do, your Honor.

01:36PM

7 Mr. Pollard wishes to express his regret for
8 the things that he did and he apologizes to those people
9 who were harmed by his actions and that not only includes
10 the victims of this crime but his family as well. He
11 understands that it has been a very difficult time for
12 them, and he wishes that he could take back what has
13 happened. Although he can't, he is here to accept his
14 punishment. I do want to make a statement that his
15 family, who I've met, are a great support network for
16 Mr. Pollard; and they're going to be very helpful to him
17 in his future while he's on supervised release and things
18 of that nature.

01:36PM

19 Mr. Pollard's history shows that he had a long
20 employment history with ExxonMobil. Unfortunately that
21 ended in termination; and as the court is aware, there
22 was a lawsuit involved with that and placed him in some
23 financial hardship after several years of litigation.

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24 Mr. Pollard also suffers from degenerative
25 disc disease which has resulted in chronic pain over

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1 time; and he has taken medications for that, including
2 pain relievers, muscle relaxers, and antiseizure
3 medications, which have affected him a little bit in
4 terms of his personality and mood over time, which
5 coupled with his employment situation placed him in a
6 position where he became employed with the rare coin
7 industry. And he accepts full responsibility for what he
8 did to each and every one of those individuals, but I
9 would point out that the industry itself values these
10 coins. They set the book on these coins, and they are
11 the ones that tell people how much they're valued at. We
12 do believe -- although it would be virtually impossible
13 to get somebody from the industry to come in and testify
14 to the fact, we believe that the value of the coins is
15 significantly more than the -- they value the coins at
16 significantly more than the weight of the precious metals
17 that are in them. And, so, these people who have
18 invested in this industry are in for a rude awakening
19 when they go to sell their coins at some later date.
20 That results basically in an inflated loss amount. We're
21 not filing any motions objecting to the loss amount or
22 the restitution. We would simply suggest that because of
23 that and the other things that we've listed -- he has no
24 criminal history -- that the court consider the
25 recommendation of the probation officer at the low end of

1 the guideline range of 63 months to be appropriate in
2 this case as a sentence.

3 And, further, he would request placement at
4 Beaumont in order to allow for family visitation.

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5 Thank you, your Honor.

6 THE COURT: All right. Mr. Pollard, do you
7 wish to make a statement?

01:39PM

8 THE DEFENDANT: Just concluding with what he
9 said, that I'm very sorry for everything that happened;
10 that I'm sorry for the pain it has brought to my victims,
11 to my family members, and to my church; and that I'm here
12 to accept my punishment.

13 THE COURT: All right. Does the attorney for
14 the government wish to make any remarks?

01:39PM

15 MR. TORTORICE: Yes, your Honor. I apologize.
16 I'm having some voice issues today.

17 THE COURT: Okay.

01:39PM

18 MR. TORTORICE: So, your Honor, there's I
19 guess a number of factors at play here. On one hand,
20 Mr. Pollard eventually did cooperate with this
21 investigation related to his own conduct. It took us
22 awhile to get there but he eventually did and, so, I
23 think that there's -- you know, in terms of a guideline
24 sentence, that that should be maybe factored in. But
25 there's also another couple of issues at play.

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1 No. 1, at least one of the victims -- and just
2 to make sure the court is aware, one of the victims, at
3 least his attorney is here and would like to address the
4 court at the appropriate time.

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5 THE COURT: All right.

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6 MR. TORTORICE: But that particular victim,
7 who sustained a 4-million-dollar loss in this, had more
8 than just an arm's-length type business relationship with
9 Mr. Pollard. They had a very close relationship, a
10 very -- almost like a father/son relationship. Maybe not
11 quite that but something approaching a very close
12 relationship of affection. And while that clearly is not
13 a position of trust pursuant to the guidelines, I do
14 think the court should be aware of that and consider that
15 he abused this -- the closeness of that relationship in
16 perpetrating this fraud.

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17 The second point about the value of the coins,
18 I tend to agree that they're probably overvalued; but the
19 person selling these overvalued coins to the investors is
20 the defendant. So, it's kind of hard to accept that that
21 should mitigate because they're overvalued. So, either
22 he knows they're overvalued and is selling overvalued
23 coins to people or he doesn't and was intentionally
24 ripping off this amount of money. Either way, I don't
25 think it particularly matters in terms of what's an

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1 appropriate sentence. I think it kind of negates. So, I
2 think that the loss amount is accurate in terms of his
3 own personal culpability as opposed to this "Well, it's
4 not really worth that." So, I think those factors kind
5 of argue for a middle-of-the-guideline sentence, in the
6 government's perspective.

7 THE COURT: All right. Does any victim of the
8 offense wish to make a statement?

9 MR. HOLLISTER: Yes, your Honor.

01:41PM

10 THE COURT: Please come forward.

11 MR. TORTORICE: Would you like him at the
12 podium or here?

13 THE COURT: You can be at the podium.

01:41PM

14 MR. HOLLISTER: All right. Good afternoon,
15 your Honor. May it please the court.

01:42PM

16 My name is Buck Hollister and I'm an attorney
17 representing one of the victims, Keith Moe, and he wasn't
18 feeling very well and asked me to actually attend today's
19 proceedings to give statements on his behalf. If you
20 would give me the courtesy, I just would like to take a
21 couple of minutes to make those statements to the court.

22 THE COURT: Okay.

01:42PM

23 MR. HOLLISTER: My client has been financially
24 and emotionally devastated by the actions of what
25 happened. He basically went to purchase several million

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1 dollar's worth of numismatic coins and now basically
2 they're all gone and he has no way to actually go and
3 recoup that because he's nearly 80 years old, he's in
4 failing health, and he has been under so much stress that
5 as of April last year, he actually suffered a massive
6 heart attack and has been recovering since that point.

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7 He also wanted to make sure that he was able to go and
8 use this money basically for his own grandchildren's
9 college education, and he's now no longer able to do
10 that. And now, because he is in an older state and he
11 only has so much money, his wife now is having to go out
12 and actually look for additional employment as well.

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13 The theft of his coins also impacts his
14 abilities to actually be able to go and set up long-term
15 care costs and then also his own health care costs. Yes,
16 there is Medicare; but at the same time, he was planning
17 on using this money to basically go and pay for that.

01:43PM

18 I guess my client -- I'd like to note for the
19 court -- is a very deeply religious man; and that's,
20 building off of what the prosecutor said a little bit
21 earlier today, how he and Westley Pollard, Jr., actually
22 connected. There was a close bond of trust. When my
23 client first met Westley Pollard, Jr., he saw someone
24 that was actually trying to go and climb a ladder of
25 success, care for his family; and being an older

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1 individual and actually an executive of 3M, which is a
2 publicly traded company, he thought he'd go and try to
3 help him out. So, he converted some of his retirement
4 portfolio over to basically purchasing numismatic coins
5 with the thought that, okay, Westley Pollard, Jr., will
6 earn commissions and at the same time be able to go and
7 care for his family. Then, much to his chagrin and
8 disappointment, he never actually got those coins back
9 after going and placing his trust with Westley; and he
10 now feels betrayed.

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11 So, then fast-forward back up to this year,
12 basically my client has saw that Westley Pollard, Jr.,
13 has acknowledged what he has actually done and
14 appreciates that. And this is the most important point
15 to my client, is that basically, being a religious man,
16 it seems like Westley Pollard, Jr., with the statements
17 he's made here today and then actually trying to help on
18 the civil side -- because there is a civil case going on
19 against the coin firms as well -- that basically he feels
20 that Westley has atoned for his sins and actually
21 acknowledged it. And from Keith Moe's standpoint, that's
22 the most important point, that you acknowledge your
23 mistakes in the past and that you're willing to actually
24 go and step up and basically take corrective actions and
25 so forth. So, my client ultimately asks the court here

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1 today, when going through the Sentencing Guidelines, not
2 only to look at the -- not only the financial impact and
3 emotional impact it's done to the family but also the
4 corrective action that Westley Pollard, Jr., has taken;
5 and by the fact that he's taken that corrective action,
6 it shows that he almost deserves like a second chance.
7 So, he asks that you take the totality of the
8 circumstances into account when deciding how long to
9 sentence Mr. Pollard here today.

01:45PM

10 Thank you for your time, your Honor.

11 THE COURT: Okay. Any other victims wish to
12 make a statement?

13 MR. TORTORICE: No, your Honor.

01:45PM

14 THE COURT: All right. Does counsel know of
15 any reason why sentence should not be imposed at this
16 time?

17 MR. MCELROY: No, your Honor.

18 MR. TORTORICE: None from the government.

01:45PM

19 THE COURT: Pursuant to the Sentencing Reform
20 Act of 1984, having considered the factors noted in
21 18 U.S.C., Section 3553(a), and after having consulted
22 the advisory Sentencing Guidelines, it is the judgment of
23 the court that the defendant, Westley Pollard, Jr., is
24 hereby committed to the custody of the Bureau of Prisons
25 to be imprisoned for 63 months on Count 1 of the

01:45PM

1 indictment.

2 While incarcerated, it is recommended that the
3 defendant participate in the Inmate Financial
4 Responsibility Program at a rate determined by Bureau of
01:45PM 5 Prisons staff in accordance with the requirements of the
6 Inmate Financial Responsibility Program.

7 It is further ordered the defendant is to pay
8 restitution totaling \$5,480,000 to the victims and in the
9 amounts listed in the "Restitution" section of the
01:45PM 10 presentence report, which is due and payable immediately.

11 The court finds the defendant does not have
12 the ability to pay a fine. The court will waive the fine
13 in this case.

14 It is ordered the defendant shall pay the
01:46PM 15 United States a special assessment of \$100 which is due
16 and payable immediately.

17 Upon release from imprisonment, the defendant
18 shall be on supervised release for a term of 3 years.
19 Within 72 hours of release from the custody of the Bureau
01:46PM 20 of Prisons, the defendant shall report in person to the
21 probation office in the district to which the defendant
22 is released.

23 The defendant shall not commit another
24 federal, state, or local crime and shall comply with the
01:46PM 25 standard conditions that have been adopted by this court.

1 In addition, the defendant must comply with the mandatory
2 and special conditions and instructions that have been
3 set forth in the defendant's presentence report.

4 The court finds this to be a reasonable
5 sentence in view of the nature and circumstances of the
6 offense entailing the defendant's commission of mail
7 fraud; his soliciting coins from four individuals to whom
8 he had previously sold coins (one of whom was a
9 vulnerable victim); his telling them that their coin

10 collections had increased in value and that he could sell
11 the coins at significantly higher prices than they had
12 paid; his offering to have the coins regraded to a higher
13 grade which would increase their value; his obtaining the
14 coin collections after directing the individuals to send
15 them to him; his selling the coins to pawnshops or other
16 coin dealers without the individual's consent and using
17 the proceeds from the sales for his personal benefit,
18 which resulted in substantial financial hardship to the
19 victims; and his responsibility for a total loss of

20 \$5,480,000. It will serve as just punishment, promote
21 respect for the law, and deter future violations of the
22 law.

23 Although the court finds the guideline
24 calculations announced at the sentencing hearing to be
25 correct, to the extent they were incorrectly calculated,

1 the court would have imposed the same sentence without
2 regard to the applicable guideline range in light of the
3 factors set forth in 18 U.S.C., Section 3553(a).

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4 What happened to the proceeds? I mean, this
5 was a lot of money. Was nothing recovered?

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6 MR. TORTORICE: Well, your Honor, they were
7 sold at pawnshops for essentially the weight of the
8 metal, which is far less, you know, a fraction of what
9 the victims paid, because they're paying for these what
10 they thought were collectibles.

11 THE COURT: I understand. Collectible coins,
12 I know. There's a lot of litigation over that.

01:48PM

13 MR. TORTORICE: Right. So, this \$5.4 million
14 worth of coins might have only netted a million or less;
15 and to the best of the government's ability, we -- there
16 was really very little, if anything, to recover.

17 THE COURT: Okay. A million dollars still is
18 substantial.

01:48PM

19 MR. TORTORICE: Well, it is a substantial
20 amount of money. I mean, I can tell you from our
21 financial analysis and our work on that, we looked and
22 it -- unless it's moved somewhere that we were unable to
23 see it.

01:48PM

24 THE COURT: Okay. All right.
25 You have a right to appeal your conviction if

1 you believe that your guilty plea was somehow unlawful or
2 involuntary or if there was some other fundamental defect
3 in the proceedings that was not waived by your guilty
4 plea. You have a statutory right to appeal your sentence
5 under certain circumstances, particularly if you think
6 the sentence is contrary to law. A defendant, however,
7 may waive those rights as part of a plea agreement and
8 you've entered into a plea agreement which waives certain
9 rights to appeal your conviction and sentence.

10 With the exception of the reservation of the
11 right to appeal on specified grounds set forth in the
12 plea agreement, you've waived any appeal, including
13 collateral appeal, of any error which may have occurred
14 surrounding the substance, procedure, or form of the
15 conviction and sentence in this case. Such waivers are
16 generally enforceable; but if you believe the waiver is
17 unenforceable, you can present that theory to the
18 appellate court.

19 MR. TORTORICE: With few exceptions, any
20 notice of appeal must be filed within 14 days of judgment
21 being entered in your case. If you're unable to pay the
22 cost of an appeal, you may apply for leave to appeal *in*
23 *forma pauperis*. If you so request, the clerk of the
24 court will prepare and file a notice of appeal on your
25 behalf.

1 The presentence report is made part of the
2 record and is placed under seal except counsel for the
3 government and defense may have access to it for purposes
4 of appeal.

01:49PM

5 Were there any other counts?

6 MR. TORTORICE: Yes, your Honor. We would
7 move to dismiss the remaining counts of the indictment.

8 THE COURT: That's granted.

01:49PM

9 And then the defendant needs to surrender
10 on -- before 2:00 o'clock on June 25th, 2018, to the
11 marshal for -- and then serve his sentence.

12 And I'll recommend the Beaumont facility.

13 MR. MCELROY: Thank you, your Honor.

01:49PM

14 THE COURT: If there's nothing further, then
15 you're excused.

16 (Proceedings adjourned, 1:49 p.m.)

17

18 COURT REPORTER'S CERTIFICATION

19 I HEREBY CERTIFY THAT ON THIS DATE,
20 SEPTEMBER 10, 2018, THE FOREGOING IS A CORRECT TRANSCRIPT
21 FROM THE RECORD OF PROCEEDINGS.

22

23

24

25

/s/
TONYA JACKSON, RPR-CRR